

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

HERMAN CARLEE McMILLIAN,  
Plaintiff,

- versus -

SUPERINTENDENT PATRICK GRIFFIN;  
CORRECTION OFFICER E. SANTANA  
DAY; SUPERINTENDENT CHARLES  
KELLY; CORRECTION OFFICER  
OWENS; OFFICER TUCKER; MISS  
VITALITY; DISTRICT ATTORNEY  
ROBERT T. JOHNSON; and CORRECTION  
OFFICER McCRORY,

Defendants.

ORDER

13-MC-503

JOHN GLEESON, United States District Judge:

Herman Carlee McMillian, currently incarcerated at Sullivan Correctional Facility, is a frequent litigant in this district.<sup>1</sup> By order dated September 1, 2005, I barred him from filing any *in forma pauperis* complaint unless he alleges that he is under imminent danger of serious physical injury. *See In re request for leave to file by Herman Carlee McMillian*, No. 05-MC-197 (JG), slip op. at 2 (E.D.N.Y. Sept. 1, 2005) (citing 28 U.S.C. § 1915(g)). Before me now is a new complaint received June 26, 2013 alleging “deliberate indifference . . . to the constitutional right of McMillian,” “Defamation of character,” libel, and slander.<sup>22</sup> In the present action, McMillian files a request to proceed *in forma pauperis*, an “Application for Leave to File” and “Notice of Motion to Demonstrate that McMillian is under Imminent Danger of Serious Physical Injury,” a “Notice of Motion for Special Circumstances *In Forma Pauperis*,” and two “Affidavits” in support of these motions.

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<sup>1</sup> Plaintiff has filed nearly 80 actions in this court.

These documents describe incidents that occurred while he was in custody in 2004 and 2009 and his past requests to be placed in protective custody. McMillian raised these same concerns in motions and affidavits he filed in a prior case, *McMillian v. Griffin, et al.*, No. 13-MC-254 (JG). I considered these claims under governing law and concluded that he had not established that he was in imminent danger of serious physical injury at the time he filed that complaint. As the instant motions do not suggest any new facts from which I could infer that he is now in imminent danger of serious physical injury, I again deny leave to file the instant complaint pursuant to § 1915(g).

I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

So ordered.

John Gleeson, U.S.D.J.

Dated: October 4, 2013  
Brooklyn, New York

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<sup>2</sup> These claims are similar to those made in multiple previous filings, most recently in 13-MC-254 (JG).